(7)

FILED
NOV 20 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1944

No. 694

ISAAC TRAININ,

Petitioner,

against

DAVID E. CAIN, Commanding Officer of Camp Upton.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

OSMOND K. FRAENKEL,
Attorney for Petitioner.

INDEX

PAGE

Petition for Writ of Certiorari 1

Summary statement 1

Opinion Below 9

Jurisdiction 9

Questions presented 10

Reasons relied on 11

Brief in Support of Petition 15

Jurisdiction 15

Statute and regulations 15

Statement of the case 16

Summary of argument 17

Argument:

Point I—The Circuit Court of Appeals erred in holding that the action of the Draft Board could be sustained although not supported by substantial evidence 17

Point II—The Circuit Court of Appeals erred in holding that a duly ordained minister is not entitled to exemption unless he is also a regularly functioning minister 22

Point III—The Circuit Court of Appeals erred in holding that there was evidence before the Draft Board to justify a denial of petitioner's claim for exemption 25

A. The evidence compelled the conclusion that petitioner had been duly ordained 27

B. With regard to petitioner's functioning as a rabbi 31

PAGE

C. The Board erred in considering irrelevant matter 35

POINT IV—The Draft Board improperly abdicated its functions to a panel not vested with any authority by law 38

POINT V—The decision of the Draft Board was improperly sustained on the basis of material which was not before the Draft Board at the time it reclassified petitioner 40

Conclusion 43

CASES

	PAGE
Acker v. United States, 298 U. S. 426	11, 18
Arbitman v. Woodside, 258 F. 441	11
Benesch v. Underwood, 132 F. 2nd 430	11
Bridges v. Wixon, not yet reported	21
Cantwell v. Connecticut, 310 U. S. 296	36
Chin Yow v. United States, 208 U. S. 8	20
Consolidated Edison Company v. National Labor Relations Board, 305 U. S. 197	11, 18
Matter of Daley v. Board of Estimate, 267 App. Div. (N. Y.) 592	40
DeJonge v. Oregon, 299 U. S. 355	42
Federal Trade Commission v. Reladam Company, 316 U. S. 149	18
Florida v. United States, 292 U. S. 1	11, 18
Graf v. Mallon, 138 F. 2nd 230	11
Gunning v. Cooley, 281 U. S. 90	11
Helvering v. Rankin 295 U. S. 123	11, 18
Interstate Commerce Commission v. Union Pacific Railroad Company, 222 U. S. 541	18, 21
Johnson v. United States, 126 F. 2nd 242	11, 19
Morgan v. United States, 304 U. S. 1	13, 41
National Labor Relations Board v. Colombian E. & S. Company, 306 U. S. 92	18
Newbrand v. City of Yonkers, 285 N. Y. 164	13, 40
Nishimura Ekiu v. United States, 142 U. S. 651	20

PAGE

Penn Railroad Company v. Chamberlain, 288 U. S. 333 11

Rase v. United States, 129 F. 2nd 204 11
Rogers, In re, 47 F. Supp. 265 24

Seele v. United States, 133 F. 2nd 1015 11
Silberschein v. United States, 266 U. S. 221 21
Stuart, Ex parte, 47 F. Supp. 415 24

Tang Tun v. Edsell, 223 U. S. 673 20
Tisi v. Tod, 264 U. S. 131 21

United States v. Ballard, 322 U. S. 78 36
United States ex rel. Reel v. Batt, 141 F. 2d 845 ..... 12, 35, 37
United States ex rel. Kornfeld v. Cain, not yet reported 12, 13, 35, 37
United States ex rel. Levy v. Cain, 55 F. Supp. 956 13
United States ex rel. Vajtauer v. Commissioner of Immigration, 273 U. S. 103 21
United States ex rel. Beye v. Downer, 143 F. 2nd 125 42
United States v. Ju Toy, 198 U. S. 253 21
United States ex rel. Rubin v. Magruder, 55 F. Supp. 947 ..... 11, 13, 19, 30
United States v. Messersmith, 138 F. 2nd 599 11

Washington V. & M. Coach Company v. National Labor Relations Board, 301 U. S. 142 11

STATUTES AND REGULATIONS

Selective Training and Service Act of 1940, § 5, subd. "d" 11, 15, 22
Selective Service Regulations 622.44 ..... 11, 15, 22
Selective Service Regulations 626.2-a, b 2, 12, 14, 16, 25, 43

IN THE

Supreme Court of the United States

OCTOBER TERM 1944

No.

ISAAC TRAININ,
Petitioner,
against
DAVID E. CAIN, Commanding Officer of Camp Upton.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Isaac Trainin, respectfully represents and petitions for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit as follows:

Summary Statement

Petitioner seeks to review a judgment of the United States Circuit Court of Appeals affirming the judgment of the District Court for the Eastern District of New York quashing a writ of habeas corpus (147). The writ was issued to challenge petitioner's induction into the army under the Selective Training and Service Act of 1940. Petitioner had claimed exemption from military service

under this Act on the ground that he was both a regular and a duly ordained minister of religion, a claim originally accepted by his Local Draft Board (3). The Board then reconsidered its reclassification and classified petitioner as subject to military service (3). The habeas corpus proceedings were instituted after petitioner had submitted to induction in the army, following his exhaustion of the administrative remedies provided for by law (4).

It must be borne in mind that this is not the usual case in which the registrant has the burden of proving his right to an exemption. For that exemption was granted him by his Draft Board—indeed, twice granted (see 66). Further consideration of his status by that Board was, under the regulations, permitted only on the basis of "facts not considered when the registrant was classified" (626.2).* We submit that no such facts were adduced before the Board. Consequently it had no right to change petitioner's classification.

Petitioner claimed in his affidavit, submitted in support of the habeas corpus proceedings, that he had been ordained toward the end of 1939 by his father and in May, 1940 by two other rabbis, that he functioned as the rabbi of the Congregation Tifereth Zion Anshe Sfard at 2371 84th Street, Brooklyn, even before he had been formally ordained as rabbi and that he continued to function after he had been ordained (6). Petitioner called attention to the fact that under Hebrew law one rabbi might ordain another and that his qualifications as a rabbi had been vouched for by two organizations of Hebrew rabbis, whose statements on his behalf were annexed to the habeas corpus petition as Exhibits "A" and "B" (7, 8).

One of these statements certified that petitioner had been a member of the Assembly of Hebrew Orthodox Rabbis of America and Canada for several years past and that he had been found qualified to be a rabbi (10); that any conclusion that he was not a rabbi "is at variance with the

* The full text of the regulation is printed *infra* at page 16.

facts and reality" (11). The other paper was signed by the Federation of Orthodox Rabbis of America and certified that petitioner was a rabbi and the spiritual leader of his congregation (12).

Petitioner's contention in his application for the writ of habeas corpus was that the classification made by the Draft Board was contrary to law, without support in the evidence and arbitrary (4, 8).

The return to the writ was purely formal (13); the traverse to the writ realleged the matters set forth in the original application (14).

Thereafter a hearing was held on three separate days before Judge Inch. At the hearing before Judge Inch the Draft Board file was placed in evidence and summarized by one of its members (15-23). This showed that petitioner had claimed exemption as a rabbi of the Hebrew Orthodox faith in the questionnaire filed by him in July, 1941 (15, 24) and that the Assembly of Hebrew Orthodox Rabbis had certified on August 1, 1941, that petitioner was a rabbi (36).

It appeared, moreover, that the Draft Board asked one Moses Elihu Leiter, himself a rabbi, to make an inquiry with regard to petitioner's qualifications as a rabbi (16). Rabbi Leiter wrote the Draft Board on September 4, 1941, stating, among other things,

> "In accordance with Rabbinic law, an individual may be fully ordained by another individual rabbi and thus be qualified as a rabbi in Israel. That is the case of Rabbi Isaac Nathan Trainin whose documents show that he was duly ordained by the Rabbis Jacob Mendelsohn of Newark, New Jersey, and Alexander Levine of Brooklyn" (38).

Subsequently the Board classified petitioner as exempt (16).

Several months later the Draft Board received communications questioning petitioner's right to exemption (16, 17). In checking this information one of the members of

the Board interviewed petitioner and also the president of the congregation, as the result of which the Draft Board continued petitioner's exempt status (65, 66).

The question of petitioner's status apparently came up again as the result of an inquiry made to the Draft Board by the Character Committee appointed by the Appellate Division of the Supreme Court of the State of New York before whom petitioner had appeared for admission to the bar (17, 35). That petitioner had been studying law was disclosed in his original questionnaire (7).

Following this inquiry the Draft Board did not call petitioner before it (36), nor did it call any other person who might have had information (28). Instead it sent petitioner's file to Selective Service headquarters in New York City (17). Headquarters turned the matter over to a panel which it had set up for advice on religious matters (17, 56). This panel was not provided for in any general regulations, nor had Col. McDermott, head of the New York City Selective Service, promulgated any regulations with regard to such a panel (59).

The competency of the panel which sat in this case is open to serious question. Petitioner claimed to be a rabbi of the Orthodox Hebrew faith (36). Petitioner appeared before five members of the panel, no one of whom was a member of that faith. Only two of the five persons were rabbis, Rabbi Herbert Goldstein and Rabbi Israel Leventhal. They are graduates of the Conservative Seminary (89) and are rabbis with whom the Orthodox Hebrew rabbis have had controversies (90). The one group is Hebrew Orthodox, the other Modern Orthodox (88). Rabbi Goldstein did not claim that he was a Hebrew Orthodox rabbi. On the contrary, he indicated that he had been head of the English Orthodox rabbis (96, 108). This itself accounts for some of the atmosphere of the case and for the animus which pervades Rabbi Goldstein's testimony (see particularly 103-106). It is obvious that Rabbi Goldstein, himself a graduate of a seminary and a teacher at a seminary,

was prejudiced against rabbis who were not seminary graduates. He had a predisposition to suspect as not properly qualified anyone who did not hold a certificate from a seminary (108-110). Exemption of ministers is, however, not conditioned upon their being seminary graduates, although exemption of students is conditioned upon their being students at recognized seminaries.

Petitioner appeared before these members of the panel on November 17, 1943. The panel inquired into the ordination certificates produced by petitioner (126, 127), particularly with regard to the presence on these papers of certain particular words (128). Petitioner stated that no particular form of words was required (128). The panel also inquired into petitioner's residence, marriage and education (128-130) and the functions he had performed as rabbi (130-133). The panel questioned petitioner with regard to his attendance at law school and the work performed while acting as a clerk and his intentions with regard to the practice of law (133-135) and with regard to the financial situation of petitioner's congregation (136, 137). Finally, petitioner was questioned with regard to matters of rabbinical knowledge (138-140).

The panel gave to the Draft Board no expert opinion of any kind, but instead merely reported a recommendation that petitioner be not exempted (17, 31).* The Draft Board on the basis of this recommendation and without communicating with petitioner (36) changed its original determination that petitioner was exempt (18). After petitioner demanded a hearing he was seen by a single member of the Board, Mr. Goldman (18). On that occasion his qualifications as a rabbi were attested to by five other rabbis in person, one of whom was his father (28), and petitioner submitted to the Board two contracts with his congrega-

* The panel did, it is true, make a notation of its reasons for declaring that petitioner should not be exempted (21). This so-called "confidential memorandum" was not communicated to the Draft Board at the time, nor until many months after the Draft Board had reclassified petitioner (32).

tion (47), one of which had been entered into in August, 1941, for a three-year term (6). The Draft Board immediately adhered to the reclassification which had been made a few weeks before (18). Petitioner then vainly appealed to the Appeals Board, although he was supported in this appeal by the two rabbinical organizations already referred to (62-63).

The only member of the Draft Board who testified before Judge Inch was Mr. Goldman. He admitted that petitioner had claimed exemption because he had been functioning as a rabbi (24-25) and that the only thing which the Local Board had done to ascertain whether or not that claim was true was to send the file to headquarters (26). Headquarters apparently made an investigation which is embodied in reports dated November 17th and 23rd, 1943 (28, 29, 31). These reports were not seen by the Local Board until March 20, 1944 (21, 22), on the eve of petitioner's induction on March 22nd (20). They played no part in the Board's reclassification of petitioner (29, 31) or in the determination of the Appeals Board (61, 62). Nevertheless, these reports were considered by the Trial Court and motions twice made to expunge them from the record were denied (31, 32, 62). This action was justified by the Circuit Court of Appeals and forms the basis of one of the points on which review is sought by this Court. The details will be discussed more fully hereafter.

Mr. Goldman admitted that petitioner had also claimed exemption as a duly ordained rabbi and that the five rabbis who attended with him in December supported his claim (34), as had two organizations of Orthodox rabbis (36, 37). The Local Board did nothing to investigate this claim other than to rely on the decision of the panel and the minutes of the panel.

Petitioner, at the hearing before Judge Inch, sought to ascertain on what grounds the Draft Board had rescinded its original exemption. At first Mr. Goldman suggested that it was because petitioner was "more inclined to follow

the law than to establish himself as a rabbi" (42). Then he made some aspersions on the method by which petitioner had been ordained. Mr. Goldman admitted, however, that the Board had made no investigation in order to determine whether under Hebrew law one rabbi had the power to ordain another, and he admitted that all of the rabbis who had appeared before him had stated that a single rabbi could ordain another (43). Mr. Goldman was unable to indicate anything in the record to justify a contrary conclusion (44).

Mr. Goldman then shifted his ground and sought to sustain the Board's action by contending that the certificates of ordination were not in proper form (45). When asked to indicate what evidence there was in the record to show that any particular form of words was necessary, he referred merely to certain questions which had been asked by one of the members of the panel (46). These questions, however, did not constitute any evidence as to the necessity for the existence of any such words (see 128). At the hearing before Judge Inch it was conclusively shown that under Hebrew law no particular words were necessary (see *infra*, p. 29).

Mr. Goldman admitted that no attempt had been made by the Local Board to determine whether or not petitioner was actually functioning as a rabbi of the congregation, although it was located within a mile of the Local Board's office (47, 48). Nor did the Board make any attempt to communicate with any member of the congregation or with the organizations which sponsored petitioner (28, 47, 48).

Testimony was also given on behalf of respondent by Col. Durham, Chief of the Legal Division of Selective Service Headquarters of New York City. He merely testified as to how the panel came to be organized (55, 56) but made it clear that neither the law nor any regulations dealt with the establishment of such a panel (59). A member of the Appeals Board testified but added nothing to the testimony of other witnesses (60-65).

Respondent also called Rabbi Goldstein, one of the members of the panel, who testified at length, both with regard to what occurred before the panel and with regard to his own personal opinions (96-112). He admitted that under Hebrew law one rabbi could ordain another (101). He admitted also that under Hebrew law no particular form of words was required in the certificate of ordination (101).* With his testimony as a whole we will deal further hereafter.

One of the rabbis who had ordained petitioner, Rabbi Levine, had appeared before Mr. Goldman and also testified before Judge Inch. He stated that he had examined petitioner and concluded that he was qualified to be a rabbi and that he had so told Mr. Goldman (115, 116). Rabbi David Savitz, for seventeen years the rabbi of the Jewish Community Center of Hunts Point, New York, testified to the same effect (86-88). So did Rabbi Gartenhaus, President of the Federation for Hebrew Orthodox Rabbis (113, 114). That petitioner's certificates of ordination were in proper form was also attested by Rabbi Isidore Dushowitz, one of the Chairmen of the Rabbinical Board of Greater New York (94, 95). Both Rabbis Savitz and Gartenhaus testified that there was no possible basis in Hebrew law for any finding that petitioner's certificates were not proper (86, 114).

In addition to the foregoing, petitioner and his father testified with regard to petitioner's studies and activities as a rabbi (67-72, 118-124).

In his opinion quashing the writ (149-155) Judge Inch concluded that he had no power to set aside the Draft Board's decision because it had heard petitioner fully. He said also:

> "That there has been a sharp and apparently sincere controversy here over a religious issue is apparent,

* When asked whether Jewish law prescribed any particular form of words he said: "No, except custom. * * * I mean the custom of the Orthodox Theological Seminaries, and as a rule the individual rabbis" (101).

but the Court does not feel that it is necessary nor its duty to take sides in such controversy" (154).

The Court did not in its opinion indicate what this controversy was and that ground of the Trial Court's decision was apparently abandoned in the Circuit Court of Appeals.

Opinion Below

The opinion of the Circuit Court of Appeals has not yet been officially reported.* The basis of the decision was that the action of the Draft Board would not be reviewed by the Court if there was any evidence to support such action. Judge Clark expressly rejected the rule followed in the Fourth, Sixth, Seventh and Eighth Circuits that there must be substantial evidence to support a Draft Board's finding. Judge Clark also took the view that under the Selective Service regulations a person had to be both an ordained and a practicing minister in order to be entitled to exemption, although no such contention had been made by anybody at the hearing below or on the appeal. Judge Clark reached the conclusion that there was "ample justification" for the Board's action in holding that petitioner was not a regular rabbi. He recognized that the question was more difficult as to whether petitioner was duly ordained. The opinion contained many statements not supported by the record which formed the basis of an application for rehearing (193-204).

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judiciary Code, as amended. The judgment of the Circuit Court of Appeals was entered on August 15, 1944. Timely application for rehearing was made, which was denied on September 11, 1944 (205).

* It is found at pages 180-190 of the record.

Questions Presented

1. Whether in review of the action of a Draft Board in habeas corpus proceedings the Court must sustain the action taken by the Board if there is any evidence to support that action, or whether the Court must inquire whether there is substantial evidence, and, in the absence of such substantial evidence, set aside the determination made by the Board.

2. Whether under the Selective Service and Training Act of 1940 a person is entitled to exemption who is a duly ordained minister of religion, whether or not he is also a regular minister.

3. Whether there was any evidence or any substantial evidence justifying the action of the Draft Board in this case in rescinding the exempt classification originally given to petitioner and denying him the continuation of such exempt status.

4. Whether the decision of a Draft Board can be sustained where it appears in large part to have been based on considerations irrelevant to the issue which the Board was required to decide.

5. Whether a Draft Board can abdicate its function to an unofficial panel and submit to that panel the question which the Draft Board itself must determine, where the registrant is not advised of the views expressed by the panel and is given no opportunity to controvert them.

6. Whether a Draft Board's decision can be sustained on the basis of evidence which was not considered by the Draft Board in reaching the determination sought to be reviewed.

Reasons Relied on for the Allowance of the Writ

1. The Circuit Court of Appeals for the Second Circuit has decided an important question of Federal law at variance with decisions of other circuits and in conflict with the trend of decision in this Court. The Circuit Court of Appeals in its opinion expressly rejected the rule adopted in numerous other circuits that a Draft Board decision is reviewable if there is no substantial evidence in its support. See *Rase* v. *United States*, 6 Cir., 129 F. 2d 204, 207; *Graf* v. *Mallon*, 8 Cir., 138 F. 2d 230, 234-235; *Johnson* v. *United States*, 8 Cir., 126 F. 2d 242; *Benesch* v. *Underwood*, 6 Cir., 132 F. 2d 430, 431; *Seele* v. *United States*, 133 F. 2d 1015, 1021; *United States* v. *Messersmith*, 7 Cir., 138 F. 2d 599; *Arbitman* v. *Woodside*, 4 Cir., 258 F. 441. This Court has uniformly adopted the substantial evidence rule. See *Florida* v. *United States*, 292 U. S. 1, 12; *Helvering* v. *Rankin*, 295 U. S. 123, 131; *Acker* v. *United States*, 298 U. S. 426, 431; *Washington V. & M. Coach Co.* v. *N. L. R. B.*, 301 U. S. 142, 147; *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 229. It means more than "any" evidence; see *Gunning* v. *Cooley*, 281 U. S. 90, 94; *Penn. R. Co.* v. *Chamberlain*, 288 U. S. 333, 343; *Consolidated Edison Co.* v. *N. R. L. B.*, supra.

2. The Circuit Court of Appeals has decided an important question of Federal law which has never heretofore been decided by this Court and which should be decided. The Selective Service and Training Act of 1940 in Section 5, subdivision "d", provides for exemption of "regular or duly ordained ministers of religion". The Circuit Court has interpreted this provision of law to prevent exemption of a duly ordained minister unless he be also a regular minister. It based this determination on the regulations issued under the statute. These regulations, Section 622.44,*

* Printed in full at pages 15, 16, *infra*.

define a regular minister as a person who customarily performs the duties of such minister, although not ordained, and define an ordained minister as one who customarily performs the duties, but is ordained. The Circuit Court, having upheld the validity of the regulations and in effect denied any separate exemption to ordained ministers, the reference to these in the statute might as well not have been made. This question has never been heretofore passed on by any court.

3. The Draft Board acted contrary to the regulations (626.2)* in reconsidering petitioner's classification without having any new facts before it. The action of the Board was "in the teeth of all the substantial evidence" and cannot stand. *United States ex rel. Rubin* v. *Magruder*, 55 F. Supp. 947. In holding that the action of the Draft Board was justified by the evidence before it, the Circuit Court, as we shall show in the accompanying brief, disregarded essential aspects of the record and stated as facts matters which do not appear in the record. The most serious of these is the Court's statement that "certain rabbis assert" that particular words were essential in certificates of ordination. No rabbi made any such assertion before the Local Board; the evidence before the Court was conclusive to the contrary. Justice requires scrutiny of the facts by this Court.

4. Since the Draft Board made no finding as to the reasons for its action, it is impossible to determine whether it acted in accordance with the law or whether it based its conclusion largely on matters irrelevant to the issue, such as petitioner's completion of his legal studies and petitioner's alleged ignorance on certain rabbinical matters. At the very least the petitioner was entitled to have the Board indicate the reasons for its action and no determination made on this record should be allowed to stand in the absence of such a determination by the Board. See *United States ex rel. Reel* v. *Batt*, 141 F. 2nd 845; *United States*

* The full text is printed on page 16, *infra*.

ex rel. Kornfeld v. *Cain*, not yet reported, decided September 7, 1944, by Judge Abruzzo in the Eastern District of New York.

5. The Draft Board in effect abdicated its function by submitting to a panel the very question which the Draft Board was called upon to consider. A panel set up for the purpose of expressing opinions on technical matters was used for a purpose not intended or authorized. It was improper for the Board to act on the panel's recommendation without it or petitioner having any knowledge of the panel's reasons and without the Board giving petitioner an opportunity to present evidence to show that the panel's reasons had no basis in fact.

This question affects the functioning of the Draft Law primarily in New York City, but it might also affect it in other parts of the country if the same panel system has been used elsewhere or should come into use. Already several cases, in addition to the case at bar, have arisen in which panel decisions have been questioned: *United States ex rel. Rubin* v. *Magruder*, 55 F. Supp. 947; *United States ex rel. Levy* v. *Cain*, 55 Supp. 956; *United States ex rel. Kornfeld* v. *Cain*, Eastern District New York, decided September 7, 1944. Other cases are no doubt pending (see New York Herald-Tribune, October 27, 1944, p. 15, for the account of one such case). It is important, therefore, that this Court clarify the right of the Draft Board to use such a panel and the manner in which it can be used.

6. The Circuit Court sustained the receipt in evidence by the Trial Court of certain documents which were not before the Draft Board and itself used these documents in support of its conclusions. It is submitted that no administrative decision can be supported on the basis of material which was not before the administrative agency and which the person affected had no opportunity to meet. See *Morgan* v. *United States*, 304 U. S. 1; *Newbrand* v.

City of Yonkers, 285 N. Y. 164. Moreover, these documents were received by the Draft Board after petitioner had been ordered to report for induction. Under the regulations (626.2) the Board could give no further consideration to petitioner's status at that time.

WHEREFORE petitioner prays that a writ of certiorari issue out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for review and determination, as provided by law, this cause and a complete transcript of the record and of all proceedings had therein, and that the order of the United States Circuit Court of Appeals affirming the dismissal of the writ of habeas corpus in this case may be reversed, and that petitioner have such other and further relief in the premises as this Court may deem proper.

Dated, November 15, 1944.

OSMOND K. FRAENKEL,
Counsel for Petitioner.

I hereby certify that I have examined the foregoing petition for a writ of certiorari and that in my opinion it is well founded and the cause is one in which the petition should be granted.

OSMOND K. FRAENKEL,
Counsel for Petitioner.